144 FERC ¶ 61,095
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

Gulf South Pipeline Company, LP — Docket No. RP13-526-000

ORDER FOLLOWING TECHNICAL CONFERENCE

(Issued August 2, 2013)

1. On February 1, 2013, Gulf South Pipeline Company, LP (Gulf South) filed revised tariff records[1] changing its contracting and scheduling practices, especially regarding transactions using capacity on both its Legacy System and its Expansion Facilities. On March 1, 2013, the Commission accepted and suspended Gulf South's proposed tariff records listed in the Appendix for the maximum five-month statutory period to be effective August 3, 2013, subject to refund, and to the outcome of a technical conference to address issues raised by the proposal.[2]

2. On April 9, 2013, a technical conference was held. The parties then filed comments and reply comments on issues raised at the technical conference and on the proposed tariff records. Upon further review, the Commission accepts the tariff records listed in the Appendix to be effective April 1, 2014, as Gulf South requested in its reply comments, subject to the conditions discussed below.

I. Background

3. Gulf South is composed of two sets of facilities: (1) the Legacy System; and (2) the Expansion Facilities. Gulf South describes its Legacy System as resembling a large gathering system across Texas, Louisiana, Mississippi, Alabama, and Florida; it is a non-pathed, reticulated set of pipelines for which capacity is awarded and scheduled on a point-pair basis. The Expansion Facilities consist of the East Texas to Mississippi Expansion Project and the Southeast Expansion Project, which the Commission

[1] *See* Appendix.

[2] *Gulf South Pipeline Co., LP*, 142 FERC ¶ 61,167 (2013).

certificated in 2007 and 2008.[3] The Expansion Facilities form a single, 353-mile, 42-inch, high-pressure, pathed pipeline stretching from Eastern Texas to Western Alabama.

4. Gulf South filed in Docket No. RP07-561-000 to establish Firm In-the-Path Service for customers holding firm capacity on the Expansion Facilities. That filing was Gulf South's first step in setting forth rules to address the specific operational characteristics of the Expansion Facilities in its tariff. The Commission allowed Gulf South to provide a scheduling priority Firm In-the-Path Service on the Expansion Facilities immediately below that for Primary Firm Service, while not implementing that type of scheduling on its Legacy System.[4] Since the Legacy System is an interconnected web of pipelines, Gulf South continues to use a point-pair system rather than a path system for Legacy-only transportation.

5. Gulf South's existing tariff addresses contracting for and scheduling capacity on the Legacy System and on the Expansion Facilities as independent systems, but does not address contracting for and scheduling capacity that uses both facilities, combined (Combination Facilities). Gulf South asserts that since constructing the Expansion Facilities, it has been able to adapt to the operational challenges of operating the Legacy System and the Expansion Facilities together, allowing it to maximize throughput on its facilities. Gulf South also states that it is receiving increased interest from customers who wish to contract for and schedule capacity on both the Legacy System and Expansion Facilities, combined. Based on its customers' increased interest in capacity utilizing the Combined Facilities and based on Gulf South's increased operational capability, Gulf South proposes to update its tariff to facilitate use of the Combination Facilities.

6. Gulf South filed seventeen tariff records to propose rules for utilizing the Combination Facilities. Specifically, Gulf South is proposing to: (i) add and modify definitions; (ii) clarify Expansion Facilities scheduling, particularly Firm Out-of-Path scheduling, and to add a separate scheduling provision for the Combination Facilities; (iii) modify the *pro forma* service and letter agreements for firm services to allow for the inclusion of Expansion Paths;[5] (iv) modify the rate provisions of Rate Schedules FTS and

[3] *See Gulf South Pipeline Co., LP*, 119 FERC ¶ 61,281 (2007) (East Texas to Mississippi Expansion Project Certificate); *Gulf South Pipeline Co., LP*, 120 FERC ¶ 61,291 (2007) (Southeast Expansion Project Certificate), *order amending certificate*, 122 FERC ¶ 61,162 (2008) (Southeast Expansion Project Certificate Amendment).

[4] *See Gulf South Pipeline Co., LP*, 122 FERC ¶ 61,074, at P 8 (2008).

[5] An Expansion Path, as discussed in detail below, is a primary path on the Expansion Facilities.

EFT; and (v) implement other 'conforming' modifications regarding procedures for requesting service, discounting, and right of first refusal.

7. The primary goal of Gulf South's proposal is to establish a new, third scheduling provision governing the use of its Combination Facilities.[6] Gulf South states that the scheduling of Combination Facilities will be achieved by a two-part analysis: (1) for the Expansion Facilities portion of the transaction, Gulf South will schedule based upon Expansion Path scheduling rules; and (2) for the Legacy System portion of the transaction, Gulf South will schedule based upon point-pair scheduling rules. A key feature of the proposal is the use of a point designated as the "Expansion-Legacy Interconnect" or "ELI," in the analysis of nominations for service on the Combination Facilities. An ELI is a point where the Expansion Facilities and the Legacy System interconnect, allowing natural gas to either exit or enter the Expansion Facilities to or from the Legacy System. Gulf South states that there are currently four such points on its system.[7]

8. When a shipper nominates service with a receipt point on the Legacy System and a delivery point on the Expansion Facilities or vice versa, an ELI will be used in lieu of a nominated point for purposes of applying the point pair scheduling methodology for the Legacy System portion of the transaction. Similarly, the same ELI will be used for purposes of applying the Expansion Path scheduling rules for the Expansion Facilities portion of the transaction. The ELI may be either a primary, secondary, or supplemental point depending upon its status in the shipper's contract, as further explained below.

9. Gulf South's proposal includes several modifications to its Expansion Facilities-only scheduling. First, Gulf South is proposing to re-structure section 6.12 of its tariff to create an independent scheduling provision for the Expansion Facilities. This provision would set forth all scheduling rules for the Expansion Facilities in an independent provision listing all of the levels of service available on the Expansion Facilities.[8]

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[6] Gulf South asserts that it is not proposing any changes to the scheduling provisions applicable when only the Legacy System is utilized, and is proposing only minor required changes to scheduling provisions applicable when only the Expansion Facilities are utilized.

[7] These are near Carthage, Texas; Hall Summit, Louisiana; Vixen, Louisiana; and Harrisville, Mississippi.

[8] These levels of service for the Expansion Facilities include: Firm Primary Service, Firm In-the-Path Service, Firm Out-of-Path Service, Interruptible Transportation Service Paying the Maximum Rate, Interruptible Service Paying Less Than the Maximum Rate, Parking and Lending Service, and Payback Quantities.

Second, Gulf South is proposing to add Firm Out-of-Path Service to the scheduling rules for the Expansion Facilities. Gulf South states that Firm Out-of-Path rules are typically available on pathed pipelines and the inclusion of that level of service was inadvertently omitted from its application for the ability to provide Firm In-the-Path Service in Docket No. RP07-561-000. Gulf South states that this new level of service is necessary to schedule firm customers utilizing the Expansion Facilities who are not eligible for Firm Primary or Firm In-the-Path Service because they are utilizing capacity that is outside of their Expansion Path.[9]

10. As part of this proposal, Gulf South is revising the definitions in GT&C section 6.2 for Firm Primary Service, Firm In-the-Path Service, Firm Out-of-the-Path Service, and Firm Secondary Service. The new definitions clarify that, as before, Gulf South uses a path system to schedule service on its single-line Expansion Facilities; the Legacy System will continue to use a point-pair system for scheduling, but with the new ELIs serving as the points where service can switch from one system to the other. Thus, Firm Primary Service is defined as the scheduling priority for nominations under firm service agreements where both the receipt and delivery points nominated by the shipper are the primary points under its service agreement. Firm Primary Service is available for service whether it is on the Legacy System only, on the Expansion Facilities only, or on the Combination Facilities. If a shipper has a primary receipt point on the Legacy System and primary delivery point on the Expansion Facilities (or vice versa), it may also include in its Service Agreement a “contractual” ELI receipt/delivery point on the Expansion Facilities in order to define where its Expansion Path begins or ends. In that case, the contractual ELI point will be considered a primary point for the purpose of scheduling Firm Primary Service on either the Legacy System or the Expansion Facilities.

11. While Primary Firm Service is available as the highest scheduling priority on both the Legacy System and the Expansion Facilities, the lower firm scheduling priorities are defined differently on the two parts of Gulf South’s system. On the Expansion Facilities the next highest scheduling priority is for Firm In-the-Path Service, followed by Firm Out-of-the-Path Service. For Firm In-the-Path service, Gulf South is liberalizing its definition, which previously required one of the points nominated by the shipper to be a primary point and the other to be within the Expansion Path; now, consistent with the definition more commonly used by the Commission, a shipper may nominate any points within the Expansion Path in order to obtain the Firm-In-the-Path Service scheduling priority. The term Firm Out-of-the-Path Service, previously undefined, is now defined as well, to cover the remaining Expansion-only nominations that qualify as firm but not as In-the-Path.

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[9] Gulf South asserts that the Firm Out-of-Path Service proposed here is similar to that approved for Gulf South’s affiliate, Gulf Crossing Pipeline Company LLC. Gulf South February 1, 2013 Transmittal Letter at 18.

12. On the Legacy System, the next highest scheduling priority after Primary Firm Service is Firm Secondary Service, followed by Firm Supplemental Service. Gulf South's tariff defines Firm Secondary Service as the scheduling priority for Legacy System service where one point nominated by the shipper is a primary point, but the other point nominated is a supplemental point. When scheduling Firm Secondary Service on the Combination Facilities, an ELI point may be considered either a primary or supplemental point, depending upon whether it is listed in the shipper's service agreement as a contractual ELI. Firm Supplemental Service is the scheduling priority for firm Legacy System service where neither point nominated by the shipper is a primary point.

13. Gulf South has five rate zones, and uses a zone matrix system to determine the maximum rates applicable to each service agreement. The Expansion Facilities traverse all five rate zones. Gulf South states that currently it determines the maximum rate applicable to each service agreement based solely upon the location of the primary receipt and delivery points listed in each agreement. For example, if a customer has a primary receipt point in Zone 1 and a primary delivery point in Zone 3, the applicable maximum rate is the Zone 1 to Zone 3 rate. However, Gulf South states that it is possible for a customer to have an Expansion Path that uses more rate zones than are covered by the customer's primary point pairs. It gives the example of a customer with a primary receipt point on the Legacy System in Zone 2 and a primary delivery point on the Expansion Facilities also in Zone 2. However, that shipper also has an Expansion Path that starts in Carthage in Zone 1 and continues to the primary delivery point in Zone 2. Under Gulf South's current tariff, that shipper would pay the Zone 2 to Zone 2 rate, despite the fact that it has a primary firm right to use an Expansion Path that starts in Zone 1. Gulf South accordingly proposes to modify section 5.1(a) of both Rate Schedules FTS and EFT to provide that, if the shipper's service agreement includes an Expansion Path, the maximum applicable rate will be the highest maximum rate applicable to any portion of the contract, unless Gulf South agrees otherwise with a shipper.

14. Gulf South states that this proposal would only apply to new or amended contracts when an Expansion Path is specifically requested on or after the effective date of the proposed tariff records. Gulf South states that its proposal will not apply to any existing contracts and does not change the rates listed in its tariff. Gulf South states that this proposal is necessary to ensure that the shipper pays the costs of all zones it uses. Gulf South also proposes to modify its discounting provisions to allow it to consider a customer's Expansion Path (or lack thereof) for determining whether shippers are similarly situated and whether granting discounts is appropriate.

15. Gulf South proposes minor modifications to its *pro forma* firm transportation service agreements, discounted rate letter agreements, and negotiated rate letter agreements, in order to allow Expansion Paths to be specified in the exhibits without causing such agreements to be considered non-conforming. Gulf South is also proposing to modify its *pro forma* firm transportation service agreements, discounted rate letter agreements, and negotiated rate letter agreements to allow for the identification of rate

zones in the exhibits. Gulf South states that it will work with its existing Expansion Facilities customers to amend their firm agreements to specify the customer's Expansion Path(s) and, if desired, the customer's contractual ELIs. Gulf South states that these amendments will not change any customer's existing firm capacity rights or rates. Finally, Gulf South proposes a number of minor conforming changes throughout its tariff to ensure consistency with the substantive changes described above.

16. Gulf South asserts that its proposal is necessary to ensure that its tariff specifically addresses the treatment of firm capacity that utilizes Combination Facilities and to facilitate the scheduling and contracting of the Combination Facilities as a unified pipeline system, consistent with the Certificate Orders. Gulf South states that the proposal will benefit all customers (whether utilizing the Legacy System, the Expansion Facilities, or Combination Facilities) by setting forth clear contracting and scheduling rules in the tariff that establish a level playing field for all customers. Gulf South claims it also ensures that each customer receives the benefit of the rights associated with the facilities the customer bargained for, whether those are pathed rights on the Expansion Facilities or point-paired rights on the Legacy System.

17. Gulf South states that upon implementing the proposed tariff records, it would also phase out a business practice not reflected in its tariff, Expansion Route Codes. Gulf South explains that route codes were a temporary measure "developed to attempt to manage the Legacy System and the [] Expansion Facilities when the Commission's Certificate Orders required integration,"[10] so that a computer system developed with Legacy point-pairs in mind could handle pathed Expansion nominations. Gulf South states that it gave shippers access to these codes, and expanded their functionality to cover more path permutations in response to the demands of a small group of sophisticated shippers. Gulf South argues that these "sophisticated shippers are not enabling more gas to flow, they are simply ensuring that more of their gas flows at the expense of the other shippers," and therefore "eliminating the nomination of expansion route codes is intended to ensure that the reductions to non-primary nominations, when necessary, are fairly spread across all affected shippers."[11]

18. Gulf South asserts that its proposal is limited in nature. Other than minor ministerial changes, Gulf South states that it is not proposing any revisions to the longstanding Legacy System scheduling rules under section 6.12. Gulf South states that these Commission-approved rules maintain a competitive, level playing field for all customers utilizing the Legacy System and therefore no changes are necessary. In addition, Gulf South states that this filing does not affect firm customers that nominate

[10] Gulf South February 21, 2013 Answer at 12.

[11] *Id.* at 13.

the primary points on their service agreements. Those customers will continue to receive Firm Primary Service. Finally, Gulf South asserts that it is not proposing to modify any rates applicable to contracts existing as of the effective date of this proposal.

19. Gulf South originally requested that the Commission approve its proposal effective March 3, 2013, but with a delayed implementation date of April 1, 2014 to allow time to implement the changes. In its post-technical conference reply comments, Gulf South agreed to change the effective date of the revised tariff sheets to April 1, 2014, as discussed below.

II. Post-Technical Conference Issues

A. Priority and Quality of Service

20. A number of shippers oppose Gulf South's proposal to modify its scheduling priorities. They contend generally that Gulf South has not shown that its proposal is preferable to its existing method of scheduling service on the Combination Facilities, that it will adversely affect shippers' ability to schedule non-primary firm service, that it will unduly prefer shippers scheduling service on the Combination Facilities, and that it will create artificial constraints on parts of Gulf South's system. Several examples provided by Gulf South as to how its scheduling proposal will operate will assist in understanding these contentions.

21. In the first example transaction, the customer's contract has a primary receipt point on the Legacy System and a primary delivery point on the Expansion Facilities. In addition, in order to define an Expansion Path, the shipper's contract includes a contractual ELI receipt point at Carthage, the furthest upstream point on the Expansion Facilities. The customer nominates service from a supplemental receipt point on the Legacy System to its primary delivery point on the Expansion Facilities. Because this is a Combination Facilities transaction, the proposed Combination Facilities scheduling provisions will apply. Under those provisions, Gulf South will conduct a two-part analysis. First, it will determine the priority of service for the Expansion Facilities portion of the nomination. Because the shipper is using its Expansion Path from the Carthage contractual ELI to its primary delivery point, the priority of that service is Primary Firm Service. For the Legacy System portion of the nomination, the priority of service will be Secondary Firm Service, since the receipt point is a supplemental receipt point on the Legacy System and the Carthage ELI is considered a primary point because it is the customer's contractual ELI. Gulf South explains that under its existing scheduling provisions this transaction would receive the same scheduling priority on the Legacy System as it would under the new proposal, but on the Expansion Facilities its proposal would give the transaction a higher Primary Firm Service priority, than the Firm In-the-Path Service the customer receives under its existing tariff. Under its existing provisions, the customer could not qualify for the Primary Firm Service priority on the Expansion Facilities, because it did not nominate service from its primary receipt point on the Legacy System, even though the customer is using its entire Expansion Path as modeled and sold.

22. In another example transaction, the customer's contract has a primary receipt point on the Legacy System in Texas, a primary delivery point on the Legacy System, but an Expansion Path with a contractual entry ELI at Carthage and a contractual exit ELI at Harrisville. Even though the customer's primary points are on the Legacy System, this is a Combination Facilities transaction because the customer owns an Expansion Path. The customer nominates its primary receipt point on the Legacy System in Texas to a supplemental delivery point on the Legacy System in South Louisiana. Again, Gulf South will first determine the customer's priority of service on the Expansion Facilities. Based on the nomination, the customer will be using its entire Expansion Path from the Carthage entry ELI to the Harrisville exit ELI. Therefore, the customer will receive the Primary Firm Service priority for the Expansion Facilities portion of the nomination. Gulf South will next consider two sets of point pairs to determine the priority of service for the Legacy System portion of the nomination. The nominated service from the primary receipt point on the Legacy System to the contractual ELI at Carthage (which is considered a primary point for the purposes of Combination Facilities scheduling) will receive Primary Firm Service. The nominated service from the contractual exit ELI at Harrisville (considered primary for Combination Facilities scheduling) to the supplemental delivery point on the Legacy System will receive a Secondary Firm Service priority.

23. As in the first example, Gulf South's proposal would give the customer a higher Primary Firm Service Priority for the Expansion Facilities part of the transaction than it would receive under Gulf South's existing tariff. The existing tariff would only provide a Firm-In-the-Path priority for the Expansion Facilities part of the transaction, because the customer is not using its primary delivery point on the Legacy System, even though it is using its Expansion Path as modeled and sold. On the Legacy System, Gulf South's proposal similarly gives the first point pair a higher Primary Firm Service priority than the Secondary Firm Service priority that it receives under Gulf South's existing tariff. Only the second point pair would be treated the same under Gulf South's proposal as under its existing tariff, receiving a Firm Secondary Service priority in both cases.

1. Preferential Treatment of Certain Secondary Rights

24. Several shippers argue that Gulf South has not met its burden of proof that its scheduling proposal is just and reasonable under Section 4 of the Natural Gas Act (NGA). They contend that Gulf South's proposal is discriminatory or otherwise unjust and unreasonable in its scheduling priorities for non-primary firm transportation. They contend that the proposal would give greater secondary point rights to Combination Facilities shippers, at the expense of Legacy System shippers. They argue that Gulf South's proposal is especially burdensome because many shippers are highly reliant on secondary service. For example, local distribution company customers often schedule transactions starting at secondary receipt points and ending at primary delivery points. As a result, Legacy System contract rights would become less valuable economically, they argue.

25. Shippers assert that Legacy System shippers are more likely to be curtailed under the proposal due to path scheduling priorities provided to Combination Facilities shippers but not Legacy System shippers. Commenters argue that this is unfair when both groups of customers could potentially be operating under the same rate schedule, paying the same rates, and scheduling on the same, supposedly integrated, pipeline system.

26. Shippers also object that Gulf South is proposing pathing rights to some shippers, but not to Legacy System shippers. For example, commenters state, Expansion shippers will obtain new point rights at ELIs that will be considered primary points for purposes of scheduling transportation on a point-to-point basis from an ELI to points downstream on the Legacy System. This primary entitlement to an ELI point will make transportation from the ELI point to a primary delivery point a primary firm transaction that has the highest priority firm service, they argue. In contrast, the commenters note, a Legacy System shipper moving gas from a supplemental point to another non-primary point on the Legacy System will have lower, supplemental firm priority for a similar transaction. They argue Gulf South has not justified the discriminatory and preferential advantages afforded Expansion shippers under its proposal to access points on the Legacy System.

27. Gulf South defends its proposal as a significant benefit to its customers. Gulf South claims that there is no material factual dispute related to whether Gulf South's proposal will have an adverse impact on primary firm capacity rights; it will not. Gulf South argues it has met its burden of proof under Section 4 of the NGA by demonstrating that each aspect of its proposal is just and reasonable and should be approved by the Commission.

28. Gulf South argues that its proposal may not properly be denied even if it is found to change secondary firm service rights. Gulf South argues that service is only guaranteed to firm primary firm points, not secondary points.[12] Gulf South states that its proposal is consistent with the Commission's policy, which requires that the method for scheduling secondary transactions must be reasonable.[13] Gulf South claims that its proposal does not give an advantage to one specific class of customers over another. Gulf South states that its examples provided in pleadings and at the technical conference show that implementing the proposal may result in the same, higher, or lower non-primary scheduling priorities depending on how a customer utilizes its contract. Gulf South asserts that these priorities are consistently based on each customer's underlying

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[12] *See* Gulf South Post-Technical Conference Reply Comments at 10-11 (citing *Rockies Express Pipeline, LLC*, 142 FERC ¶ 61,075, at P 40 (2013); *Tennessee Gas Pipeline Co.*, 128 FERC ¶ 61,032, at P 48 (2009) (*Tennessee I*)).

[13] *See* Gulf South Post-Technical Conference Reply Comments at 11-12 (citing *Tennessee Gas Pipeline Co.*, 139 FERC ¶ 61,050, at P 23 (2012) (*Tennessee II*)).

contractual rights to primary firm service. Gulf South argues that the proposal aligns its tariff with the firm rights already owned by existing Combination Facilities customers.

29. Gulf South disputes the claims the Expansion Facilities shippers are preferred to Legacy System shippers. Gulf South asserts that no preference is given and Legacy System customers' non-primary firm service is not "degraded." Gulf South acknowledges that there may be circumstances when a Combination Facilities customer would obtain a higher priority on a portion of its transaction than a Legacy System-only customer if both customers nominate the same points on the Legacy System on a non-primary firm basis. Gulf South states that the higher scheduling priority would result only because the Combination Facilities customer owns a contractual ELI, which Gulf South considers a primary point for the purpose of scheduling.

30. Gulf South claims this is justified because Combination Facilities customers have specifically contracted for primary firm rights on an Expansion Path, which includes the right to enter or exit the Expansion Facilities at an ELI location. Gulf South states that the same priority would not be granted to an Expansion Facilities-only shipper, who has not contracted for the right to enter or exit the Expansion Facilities at ELI locations on a primary firm basis.[14] Gulf South states that if an Expansion Facilities-only customer were to nominate the same points on the Legacy System as a Legacy System-only customer, the Expansion Facilities-only customer could receive a lower priority than both the Legacy System-only customer and the Combination Facilities customer. Gulf South states that this example shows that it is not granting different scheduling priorities to similarly situated shippers. Gulf South asserts that its scheduling priorities are based upon the use of the specific facilities that each customer contracted for in its service agreement.

31. Gulf South argues that it is not illogical to schedule two transactions between the same points as having different priority levels for different customers because priority is based not only on what points a customer nominates, but also upon the customer's contractual rights to access those points utilizing the underlying facilities. Gulf South argues that the essential purpose of tariff-based scheduling priorities is to provide a means to determine which customers' nominations are scheduled when multiple parties are attempting to utilize the same underlying facilities. Gulf South argues that its proposal addresses a scheduling concern by filling a gap in the tariff to provide clarity on the scheduling priorities applicable to Combination Facilities shippers.

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[14] *See* Gulf South Post-Technical Conference Reply Comments at 16.

Commission Determination

32. We find Gulf South's proposed changes to its priority of service to be just and reasonable and not unduly discriminatory. As shippers note, Gulf South bears the obligation to explain the impact of the proposed revision on firm and interruptible customers, including any changes in a customer's rights to capacity and the manner in which a customer is able to use such capacity.[15] However, Gulf South is not obligated to demonstrate that all service options under its new proposal are equal or superior to the *status quo*. Rather, it merely must show its proposal to be just and reasonable.[16]

33. Gulf South's proposal is consistent with the Commission's policies concerning scheduling priorities. Under that proposal, firm shippers who nominate service using the primary receipt and delivery points in their existing service agreements will continue to have the highest scheduling priority, consistent with the Commission's policy that primary firm service must have the highest priority.[17] This is true regardless of whether the shipper's primary points are located only on the Legacy System, only on the Expansion Facilities, or on a combination of the two. Gulf South's revised scheduling priority only comes into play when at least one of the points nominated by the shipper is not a primary point.

34. Gulf South's revised scheduling priorities for non-primary firm service are also consistent with Commission policy. Since Order No. 637,[18] the Commission has required

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[15] 18 C.F.R. § 154.204(d) (2013).

[16] *E.g.*, *Tennessee I*, 128 FERC ¶ 61,032 at P 49; *American Elec. Power Serv. Corp.*, 116 FERC ¶ 61,179, at P 25 (2006); *Southwest Power Pool, Inc.*, 137 FERC ¶ 61,075, at P 79 (2011) ("the issue before the Commission is whether the proposal is just and reasonable and not whether the proposal is more or less reasonable than other alternatives.")

[17] *Tennessee II*, 139 FERC ¶ 61,050 at PP 13-18.

[18] *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs., Regulations Preambles July 1996 - December 2000 ¶ 31,091, *clarified*, Order No. 637-A, FERC Stats. & Regs., Regulations Preambles July 1996 – December 2000 ¶ 31,099 at 30,596-8, *reh'g denied*, Order No. 637-B, 92 FERC ¶ 61,062 (2000), *aff'd in part and remanded in part sub nom. Interstate Natural Gas Ass'n of America v. FERC,* 285 F.3d 18 (D.C. Cir. 2002), *order on remand*, 101 FERC ¶ 61,127 (2002), *order on reh'g*, 106 FERC ¶ 61,088 (2004), *aff'd sub nom. American. Gas Ass'n v. FERC*, 428 F.3d 255 (D.C. Cir. 2005); 18 C.F.R. §§ 284.221(g), (h) (2008).

that secondary firm service within a shipper's primary path be accorded a higher priority than secondary firm service outside the path, unless the reticulated nature of a system makes it infeasible to establish contractual paths. Gulf South's proposed scheduling priorities for the Expansion Facilities follow that policy, giving secondary firm service within a shipper's primary path on the Expansion Facilities a higher priority than secondary firm service outside its path. With regard to the Legacy System, the Commission has previously allowed Gulf South an exception from the within-the-path priority policy because the reticulated nature of the Legacy System makes it infeasible to establish contractual paths on that system. Accordingly, the Commission has previously approved Gulf South's existing tariff provisions providing a higher Secondary Firm Priority to point pair nominations including one primary point than the Supplemental Firm Priority accorded point pair nominations not using any primary point. Gulf South's proposal to continue to use those priorities for the Legacy System portion of all nominated services is just and reasonable.

35. As the examples described above demonstrate, Gulf South's proposal will result in some non-primary firm transactions nominated on the Combination Facilities receiving higher or lower non-primary firm priorities than the same transactions receive under Gulf South's existing tariff. However, this fact does not render Gulf South's proposal either unduly discriminatory against particular shippers or otherwise unjust and unreasonable. A shipper only has a guaranteed firm contractual right to service at its primary points, not at its secondary points,[19] and as already stated Gulf South's proposal has no effect on its firm shippers' existing primary firm capacity rights. The fact Gulf South's scheduling proposal may reduce some shippers' ability to schedule secondary firm service does not render it unjust and unreasonable. As the Commission has previously explained when considering similar contentions in another case, "Even if [a shipper] did suffer some reduction in secondary point rights, the Commission has also made clear that a shipper has no right to any particular secondary point priority. Shippers' rights to capacity are determined by the primary points in their contracts with the pipeline."[20] The Commission concluded that the pipeline's proposal was "just and reasonable, because all shippers will continue to receive the priority to which they are entitled depending on the point choices they make. All shippers' primary points will still receive equal priority."[21]

36. The same reasoning applies here. Gulf South's proposal will preserve primary firm service rights, establish clear scheduling and contracting rules for parties using

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[19] *Tennessee Gas Pipeline Co*., 94 FERC ¶ 61,097, at 61,402 (2001); *Southern Natural Gas Co*., 137 FERC ¶ 61,050, at P 15 (2011).

[20] *Tennessee I*, 128 FERC ¶ 61,032 at P 48.

[21] *Id*.

Combination Facilities consistent with Commission policy, and will efficiently allocate secondary services. Gulf South's proposal generates sufficient benefits for shippers as a whole to "warrant[] whatever re-evaluation of primary and secondary point selections shippers need to make."[22] Gulf South permits shippers to select a preferred point in the constrained area, such as an ELI, as a firm primary point, if the shipper needs to prioritize access to that point. When evaluating similar proposals by other pipelines, the Commission has not required further accommodations above and beyond this offer to re-select primary points.[23]

2. Elimination of Route Code System

37. Under the existing system, which has never been codified in the tariff, shippers may optionally specify an Expansion Route Code with each nomination. Several shippers argue that this system is superior and should not be replaced.

38. BG Energy Merchants, LLC (BG Energy) argues that Gulf South has not clearly demonstrated why the current shipper-supported practice of using route codes needs to be changed and the Commission should reject the instant filing. Indicated Shippers[24] claim there is no operational purpose for Gulf South's proposal, other than to fill a gap in its tariff. Indicated Shippers state that Gulf South's shippers have invested time and resources to understanding the existing Expansion Route Code system and Gulf South's proposal would force its shippers unreasonably to re-learn a new system that has no operational benefits over the pre-existing system.

39. QEP Energy Company (QEP) states that Gulf South has not shown how Gulf South will actually implement the scheduling process so that service may be evaluated by the parties. QEP states that Gulf South has never detailed how it will offer the current level of service under the proposed revisions. QEP states that the negative scheduling priority effects could be mitigated by retaining the use of Route Codes, which allow customers to schedule around constraints.

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[22] *Id.*

[23] *Gulf South Pipeline Co., LP*, 132 FERC ¶ 61,199, at P 66 (2010) (*Gulf South*); *see also Tennessee I*, 128 FERC ¶ 61,032 at P 37.

[24] Indicated Shippers for the purposes of this proceeding consists of Anadarko Energy Services Company; BP American Production Company and BP Energy Company; Chevron Natural Gas; ExxonMobil Gas & Power Marketing; and Shell Offshore Inc.

40. QEP argues that "a robust computerized system would be required to ensure a level of scheduling comparable to the level that QEP and others have been able to achieve using the Nomination Route Codes."[25] QEP urges the Commission to at least condition acceptance upon Gulf South developing computer systems capable of implementing the scheduling proposal in a way that does not degrade the shipper's ability to maximize their use of Gulf South's system. QEP proposes quarterly progress reports as a means of monitoring Gulf South's progress in creating its new scheduling system.

41. Southern Company Services, Inc. (Southern Services) states that it generally supports Gulf South's filing and appreciates Gulf South's effort to respond to customer requests for greater certainty in the utilization of Gulf South's Legacy System and its Expansion Facilities, combined. Southern Services also appreciates Gulf South's efforts to clarify and enhance shippers' priorities on the portions of their agreements that use the Combination Facilities, through the establishment of clear contractual and scheduling rules. Southern Services states that Gulf South satisfactorily responded to its inquiry regarding nominations to ELIs. Southern Services requests that the Commission accept Gulf South's proposal.

42. Gulf South argues that its current Expansion Route Code system provides an unfair advantage to those shippers who have a deep understanding of the Gulf South system, to the disadvantage of other shippers. Gulf South states that the proposed scheduling system eliminates the need for customers to select, at every nomination, which Expansion Path to utilize.

43. Gulf South further argues that its Expansion Route Code business practice creates a false sense of precision regarding the route in which customers' natural gas flows on Gulf South's system. Gulf South states that natural gas physically flows on its system based upon Gulf South's Firm Model. Gulf South states that Expansion Route Codes, despite their name, do not reflect how natural gas physically moves on the system. Instead, Expansion Route Codes exist because Gulf South's current computer system does not have a mechanism to automatically integrate nominations for Combination Facilities. Gulf South states that it will continue to maximize throughput pursuant to the Firm Model with the only difference being that each customer's scheduling priority for the service nominated will be determined by the new, automated computer system based upon each customer's underlying contractual rights to capacity.

44. Gulf South argues that its proposed tariff records describe precisely how Gulf South will implement its proposal and its scheduling computer system will operate in strict conformance with Gulf South's tariff. Gulf South states that customers, such as QEP, appear to incorrectly conflate the revisions to the scheduling computer system with

[25] QEP Post-Technical Conference Comments at 9.

Gulf South's Firm Model. Gulf South states that it has not proposed to change its Firm Model. Gulf South states that the Firm Model determines how much natural gas is awarded, while the scheduling computer system determines who receives the nominated flows.

45. Gulf South asserts that no progress report is necessary, as requested by QEP. Gulf South states that no precedent was presented by QEP to support its proposal. Gulf South also states that implementation will be in accordance with the approved tariff provisions, as Gulf South has done when implementing new computer processes in the past.[26] Gulf South states that it already provides customers with a wealth of scheduling information in its Gas Management System, rendering additional reporting redundant, unnecessary, and wasteful. Gulf South states that because it already provides many reports, customers already have enough information from which to determine whether or not its services have been degraded without additional reporting requirements.[27]

Commission Determination

46. Under the statutory scheme in the NGA, the pipeline has the initiative, through a section 4 filing, to propose rates, terms, and conditions for the service it provides. If the pipeline's proposal is reasonable, the Commission will accept it, regardless of whether other rates, terms, and conditions may be reasonable.[28] Gulf South has no section 5 burden to show that its existing practice of using Expansion Route Codes is unjust and unreasonable in order to adopt its revised scheduling priorities. It need only show that the revised scheduling priorities are just and reasonable, and as we found in the preceding section, it has satisfied that burden. The fact Gulf South's prior use of Expansion Route Codes may also have been just and reasonable does not warrant the rejection of Gulf South's revised just and reasonable scheduling proposal.[29]

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[26] *See* Gulf South Post-Technical Conference Reply Comments at 30-31 (citing Docket No. RP13-294-000 where Gulf South is currently in the midst of a delayed implementation involving an update to its computer systems in order to accommodate its new Rate Schedule ENS).

[27] For a list of reports currently furnished by Gulf South to its customers, *see* Gulf South Post-Technical Conference Reply Comments at 31.

[28] *Western Resources, Inc. v. FERC*, 9 F.3d 1568, 1578 (D.C. Cir. 1993); *Consolidated Edison Co. v. FERC*, 165 F.3d 992 (D.C. Cir. 1999).

[29] *Petal Gas Storage, L.L.C. v. FERC*, 496 F.3d 695, 703 (D.C. Cir. 2007) (The Commission is not required to choose the best solution, only a reasonable one); *ExxonMobil Oil Corp. v. FERC*, 487 F.3d 945, 955 (D.C. Cir. 2007) (The court need not

(continued…)

47. The Commission provides pipelines discretion in managing their own systems. Gulf South's proposal to implement a system that addresses the treatment of capacity that utilizes Combination Facilities will provide additional tools for managing its pipeline capacity.[30] Further, Gulf South will do so using open, transparent criteria that is clearly defined in its tariff and applied to all shippers. Gulf South need not prove that the proposal meets the additional purposes and goals advocated by its shippers.

3. Artificial Constraints or Incentives

48. QEP claims that its most significant concern is that the proposal will artificially force Combination Facilities nominations onto the Expansion Facilities, creating constraints around the ELIs. Indicated Shippers likewise assert that Gulf South's proposal would implement multiple scheduling priorities over the same path, causing confusion and inability to know whether and why nominations are curtailed.

49. UMDG[31] claims Gulf South's proposal appears to be laying the foundation for a revision of rights to firm services and a reordering of priorities for use of the Legacy System. UMDG states that it is apparent that Gulf South is seeking to enable significant growth in use of the Legacy System by Expansion shippers, perhaps to enhance its ability to market the expansion capacity when the original contracts for the expansion capacity begin to terminate. UMDG also states that the implementation of the ELI mechanism at limited locations appears to be a first step toward expanding the number of ELI points to further enhance the Expansion Facilities shippers' access to Legacy System points. UMDG argues that if the Commission entertains the scheduling proposal, the proposal should be modified to ensure Legacy System shippers experience no adverse effects.

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decide whether the Commission has adopted the best possible policy as long as the agency has acted within the scope of its discretion and reasonably explained its actions); *United Distribution Companies v. FERC*, 88 F.3d 1105, 1169 (D.C. Cir. 1996) ("the fact that AEPCO may have proposed a reasonable alternative to SFV rate design is not compelling. The existence of a second reasonable course of action does not invalidate the agency's determination.")

[30] *Gulf South Pipeline Co., LP*, 132 FERC ¶ 61,199 at P 63; *see also Rockies Express Pipeline LLC*, 124 FERC ¶ 61,215, at P 19 (2008) (*Rockies Express*).

[31] United Municipal Distributors Group (UMDG) consists of the following municipal-distributor customers of Gulf South: City of Brewton, Alabama; Town of Century, Florida; Utilities Board of the Town of Citronelle, Alabama; City of Fairhop, Alabama; Utilities Board of the Town of Foley, Alabama; North Baldwin Utilities, Alabama; Okaloosa Gas District, Florida; City of Pascagoula, Mississippi; City of Pensacola, Florida; and South Alabama Gas District, Alabama.

50. Gulf South rejects QEP's contention that Gulf South's proposal will create "artificial constraints" around ELI points that would cause less non-primary firm throughput to move through congested areas than is currently possible. Gulf South states that its proposal relies on its ability to prudently operate its system to maximize the use of available capacity, consistent with the Commission's policy of providing pipelines the discretion to manage their own systems.[32]

51. Gulf South states that if a Combination Facilities shipper nominates on a non-primary basis and is routed through a constraint due to a default ELI, but there is capacity elsewhere on its system, all affected customers will be scheduled down on a *pro rata* basis in accordance with their priority of service. Gulf South states that it will first attempt to alleviate the constraint using the entire system. After that, Gulf South recognizes that non-primary service may be affected by constraints and states that non-primary service will be scheduled down as the result of volume through ELI areas. However, Gulf South states that shippers with primary receipt points on the Expansion Facilities remain free to request a change in primary points so that they will have primary firm priority for their deliveries on the Legacy System. Gulf South asserts its proposal minimizes constraints and maximizes throughput for the benefit of all customers. Gulf South argues that as the pipeline operator, it is in the best position to manage the operations of its system, including natural gas flows.

52. Gulf South rebuts assertions made by protesting parties that there will be negative impacts on its primary firm service surrounding the ELI points. Gulf South states that this will not happen because primary firm service has not been changed and will remain the top priority of service. Gulf South argues that its preservation of primary firm service rights is consistent with Commission precedent.[33]

<u>Commission Determination</u>

53. We find that Gulf South has adequately responded to the shippers' concerns about system constraints. As the operator of its system, it is in the best position to manage its system in manner that maximizes gas flows. We do not find sufficient evidence to support shippers' contentions that Gulf South is creating artificial constraints with the intent of increasing sales on its Expansion Facilities. Gulf South has presented evidence that it has received increased requests from customers who desire to contract for capacity

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[32] *See* Gulf South Post-Technical Conference Reply Comments at 13 (citing *Gulf South*, 132 FERC ¶ 61,199 at P 63; *Rockies Express*, 124 FERC ¶ 61,215 at P 19; *Natural Gas Pipeline Co. of America*, 41 FERC ¶ 61,164, at 61,412 (1987)).

[33] *See* Gulf South Post-Technical Conference Reply Comments at 9-10 (citing *Tennessee II*, 139 FERC ¶ 61,050, at P 14).

that utilizes the Combination Facilities. It is reasonable that it should seek to modify its tariff with regard to these transactions to eliminate the uncertainties regarding the scheduling and contracting aspects of transactions utilizing the Combination Facilities and to eliminate the downsides inherent in using an off-tariff system such as Expansion Route Codes.

B. Operational Issues

1. Segmentation

54. Sequent Energy Management, L.P. (Sequent) asserts that it appears that Gulf South is attempting to formally implement system-wide pathing on its system. Sequent states that the Combination Facilities proposal will result in Gulf South effectively dividing its system into path segments without proposing to offer customers the right to segment those paths. Sequent states that the spin-offs proposed affect the level of reticulation of Gulf South's system. Sequent states that Gulf South should initiate a process for offering full segmentation rights for shippers through the Combination Facilities implementation process, and should be required to file a segmentation implementation plan as part of this proceeding for review by the Commission and Gulf South's shippers.[34]

55. Gulf South states that nothing in its proposal changes the segmentation rules that apply to the Legacy System and the Expansion Facilities, but clarifies that all points of segmentation must be located on the Expansion Facilities. Gulf South states that, in order to segment the capacity in the example above without causing an overrun on the Legacy System, the customer would need to nominate using a receipt point east of the Perryville Exchange on the Expansion Facilities for the second segment. Gulf South asserts this is consistent with Gulf South's existing tariff and established business practices.

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[34] Sequent cites Order No. 637 proceedings to support the proposition that segmentation should be offered by Gulf South. *See Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. ¶ 31,091, *clarified*, Order No. 637-A, FERC Stats. & Regs. ¶ 31,099, *reh'g denied*, Order No. 637-B, 92 FERC ¶ 61,062 (2000), *aff'd in part and remanded in part sub nom. Interstate Natural Gas Ass'n of America v. FERC*, 285 F.3d 18 (D.C. Cir. 2002), *order on remand*, 101 FERC ¶ 61,127 (2002), *order on reh'g*, 106 FERC ¶ 61,088 (2004), *aff'd sub nom. American Gas Ass'n v. FERC*, 428 F.3d 255 (D.C. Cir. 2005).

2. Default ELIs

56. BG Energy notes that Gulf South, in its February 21, 2013 answer, agreed to modify the Default ELIs listed in its initial proposal, and requests that the Commission condition acceptance on Gulf South correcting its filing accordingly.[35]

3. Commission Determination

57. Sequent argues that Gulf South should be required to file a segmentation implementation plan. However, Sequent fails to provide sufficient detail and explanation for how and why Gulf South's existing segmentation plan, which was previously accepted by the Commission, is no longer just and reasonable even though it is not being modified in this docket. Accordingly, we decline to take action under Section 5 of the NGA at this time to revisit Gulf South's segmentation policy.

58. Finally, we direct Gulf South to honor the commitment made in its February 21, 2013 answer to modify the Default ELIs to meet its customers' requests. However, we note that the Form of Service Agreement records filed in this proceeding are sufficiently flexible that they do not need to be modified in order to reflect Gulf South's commitment.

C. Rate Issues

59. As described above, Gulf South has five rate zones, and uses a zone matrix system to determine the maximum rates applicable to each service agreement. The Expansion Facilities traverses all five rate zones. Gulf South does not propose to modify any of the maximum rates set forth in its zone rate matrix. However, it does propose to modify how it determines which of those maximum rates are applicable to each service agreement. Currently, it makes that determination based solely upon the location of the primary receipt and delivery points listed in each agreement. However, Gulf South states that it is possible for a customer to have an Expansion Path that uses more rate zones than are covered by the customer's primary point pairs. It gives the example of a customer with a primary receipt point on the Legacy System in Zone 2 and a primary delivery point on the Expansion Facilities also in Zone 2. However, that shipper also has an Expansion Path that starts in Carthage in Zone 1 and continues to the primary delivery point in Zone 2. Under Gulf South's current tariff, that shipper would pay the Zone 2 to Zone 2 rate, despite the fact that it has a primary firm right to use an Expansion Path that starts in Zone 1.

[35] *See* BG Energy Post-Technical Conference Comments at 3 (citing Gulf South February 21, 2013 Answer at 15).

60. Gulf South accordingly proposes to modify section 5.1(a) of both Rate Schedules FTS and EFT to provide that, if the shipper's service agreement includes an Expansion Path, the maximum applicable rate will be the highest maximum rate applicable to any portion of the contract, unless Gulf South agrees otherwise with a shipper. Gulf South argues that its proposal will ensure that the customer pays the costs of all zones it uses.

61. In its February 21, 2013 Answer to protests of its original filing in this proceeding, Gulf South responded to parties asserting that it must file a rate case to implement its proposal by stating that no rate case was necessary because it did not propose any changes to the approved Part 284 system-wide base rates on its rate sheets. Rather, Gulf South stated that it proposed only to clarify the method for determining the applicable maximum base rate under the existing zone-gate rate methodology when a customer requested firm capacity on the Combination Facilities through its Request for Service process and that requested firm capacity included an additional rate zone not reflected by the customer's current primary point pairs.[36]

1. Comments

62. Indicated Shippers contend that the instant filing is an impermissible attempt by Gulf South to implement its "incremental-plus" pricing proposal that has been rejected previously by the Commission.[37] Indicated Shippers state that Gulf South's apparent inability to path its Legacy System should mean that Gulf South has no idea whether a shipper nomination using both the Expansion Facilities and Legacy System would physically flow through a different rate zone or not. Indicated Shippers state that Gulf South's proposal would force shippers to adopt a "phantom" path using ELIs, over which no natural gas would actually flow, and would cause the shippers to incur additional costs with no additional benefits.

63. Sequent states that it is not clear from the record how shippers would be assessed any incremental costs, or fuel charges, when the primary receipt or delivery point is switched to an alternative ELI, regardless of actual gas flow. Sequent is particularly concerned about whether, under an existing contract, a shipper would incur new supplemental fees, or fuel charges, when gas that it scheduled flows through an alternate zone in order to effectuate delivery.

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[36] Gulf South February 21, 2013 Answer at 28-29.

[37] *See* Indicated Shippers Post-Technical Conference Comments at 1-2 (citing Southeast Expansion Project Certificate, 120 FERC ¶ 61,291 at P 25, Southeast Expansion Project Certificate Amendment, 122 FERC ¶ 61,162 at P 10; *Gulf South Pipeline LP*, 125 FERC ¶ 61,199, at P 9 (2008); and *Gulf South Pipeline Co., LP*, Docket No. CP07-32-007 (Jan. 29, 2009) (delegated letter order)).

64. Some parties also contend that Gulf South should not be permitted to make this change in how it applies its rate matrix outside of a general section 4 rate case.

65. The Louisiana Municipal Gas Authority (LMGA) states that it hopes the instant filing provides increased revenues to Gulf South, which would allow it to avoid a general Section 4 rate case as a filing of that nature would hurt the LMGA, which consists of many captive customers on Gulf South's system. The LMGA also requests that the Commission clarify that issues such as cost allocation and rate design that may arise in any future rate case will be decided solely on the substantial record evidence adduced in such case, and not be predetermined in this proceeding.

66. Gulf South states that it does not need to file a general section 4 rate case to implement the subject proposal because it does not propose any changes to the approved Part 284 system-wide base rates on its rate sheets. Rather, Gulf South states that it proposes only to clarify the method for determining the applicable maximum base rate under the existing zone-gate rate methodology when a customer requests firm capacity on the Combination Facilities through its Request for Service process and the requested firm capacity includes an additional rate zone not reflected by the customer's current primary point pairs.[38] As discussed in the next section, Gulf South states it will not apply the proposed change in its application of the zone matrix to contracts existing as of the effective date of its proposed tariff records.

67. Gulf South also states that it is not imposing an incremental-plus rate, as alleged by Indicated Shippers. Gulf South states that the Commission defines incremental-plus rates as a two-component rate "which requires a shipper to pay both the base rate as any other shipper, plus an incremental rate to recover incremental costs, for service over an integrated set of facilities."[39] Gulf South states that it is not proposing an incremental rate be charged in addition to its base Part 284 system-wide rate and that it is proposing to continue to charge only its existing base Part 284 rates. Charging the existing base rates applicable to the zones in which the shipper has contractual rights, as proposed, is just and reasonable, Gulf South argues, because it reflects the firm transportation capacity that Gulf South must reserve for a customer's use, which will be expressly reflected in such customer's contract as point pairs and an associated Expansion Path, consistent with Gulf South's zone-gate rate design.

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[38] Gulf South February 21, 2013 Answer at 28-29.

[39] *See* Gulf South Post-Technical Conference Reply Comments at 24 (citing *Northwest Pipeline Corp.*, 87 FERC ¶ 61,227, at 61,918 (1999); *Dominion Transmission, Inc.*, 101 FERC ¶ 61,047, at P 11 (2002)).

68. Gulf South states that an Expansion Path will be specified in the contract of each customer that owns Expansion Facilities capacity. Gulf South states that the Expansion Path information in the contract shows precisely in which zones capacity has been reserved on the Expansion Facilities for such customer. Gulf South states the customer would be subject to the applicable maximum rate of the rate zones utilized in the customer's Expansion Path, even if such zones are not reflected by the customer's primary point pairs. Gulf South contends that its proposal will not force shippers to adopt a phantom path that could cause them to incur additional costs. Gulf South states the additional applicable maximum rate will apply only when a customer specifically requests and contracts for an Expansion Path, which Gulf South reserves on a firm basis for that customer. Gulf South states that the only time this provision will apply is when a customer consciously chooses to contract for Combination Facilities capacity, primarily in Zones 1 or 5, that includes an Expansion Path. Gulf South states that its provision will not be triggered inadvertently by a customer.

2. **Commission Determination**

69. The Commission finds that Gulf South's proposal to apply its existing rates to certain Combination Facilities that utilize an additional rate zone is just and reasonable, in that it reflects Gulf South's recovery of costs of the capacity it reserves in order to provide firm service for those customers. Under this proposal, subject to the grandfathering proposal discussed in the next section, a customer will pay the costs for each of the zones for which it has contracted and for which Gulf South has reserved capacity. These charges will only apply to those contracts which have a defined Expansion Path specified in their contract. As Gulf South states in its reply comments, the additional maximum rate will apply only when a customer specifically requests and contracts for an Expansion Path, which Gulf South reserves on a firm basis for that customer.[40]

70. We reject the argument that the instant filing is, in effect, an incremental-plus rate, as alleged by Indicated Shippers. The Commission has defined an incremental-plus rate as a two-part rate in which the shipper pays an incremental rate in addition to paying the system rate.[41] Gulf South is not proposing to charge shippers an additional incremental rate in addition to its existing Part 284 rates for service and we do not read Gulf South's tariff filing as authorizing it to force shippers to pay for any services and zones other than those for which they are contracting.

[40] *See* Gulf South Post-Technical Reply Comments at 26.

[41] *Gulf South*, 125 FERC ¶ 61,199.

71. In light of Gulf South's commitment, discussed in the next section, to grandfather existing contracts so that they are not affected by the proposed change in the application of the rate zone matrix, we find it reasonable to allow this change to be made in this limited section 4 proceeding. The proposed change will not increase Gulf South's revenues under existing contracts, and will ensure that shippers under any new or future modified contracts will pay rates reflecting the costs of all zones in which they have contractual rights. Further, as requested by LMGA, we confirm that it remains the Commission's policy that rate issues that may arise in a future rate case will be decided on the record adduced in such case, and not be predetermined.

D. Effect of Rate Change on Existing Contracts

72. In its original filing in this case, Gulf South states that its rate proposal would only apply to new or amended contracts when an Expansion Path is specifically requested on or after the effective date of the proposed tariff records. Gulf South states that its proposal would not apply to any existing contracts. BG Energy protested the original filing, asserting that the rate proposal would cause existing shippers to lose the benefits of the rates agreed to in their contracts. BG Energy also states that it was impossible to know at this time whether it would be necessary to request changes to primary point pairs and specified Expansion Paths for existing contracts to maintain service.

73. In a section of its answer entitled "Existing Contracts will be Grandfathered and All New Requests For Service Will be Treated the Same," Gulf South states that it did not propose to modify any rates applicable to contracts existing as of the effective date of its proposal. Gulf South states that "[a]ll rates agreed to under current contracts will be honored. To the extent that a customer utilizes its existing points, the customer's current service will be maintained."[42] Gulf South states that it would apply its proposed maximum rate, as clarified, only to new customers and those customers who specifically request to amend their existing contracts. Gulf South states that customers who amend their existing contracts must be subject to the proposed rate provision so that they will not have an unfair rate advantage over new customers competing for the same capacity.

74. Gulf South proposes to grandfather the applicable maximum rates for all regulatory Right of First Refusal (ROFR) extensions of that contract. For customers whose ROFR is granted contractually by Gulf South but not required by Commission regulations, Gulf South proposes to grandfather the applicable maximum rates of that contract for one ROFR period but subsequent ROFRs will not be grandfathered.

75. Gulf South states that if a customer requests to change its primary point pair but not the associated Expansion Path, the applicable maximum rates for such point pair

[42] Gulf South Post-Technical Reply Comments at 29.

(which includes the Expansion Path) will continue to be grandfathered. If the customer requests to amend its Expansion Path along with its primary point pair, but does not add Expansion capacity in a pass-through zone that would trigger the higher applicable maximum rate, then the rates for that point pair will continue to be grandfathered.

1. Comments

76. In its Initial Comments after the Technical Conference, Gulf South further clarified how its revised rate provision would affect existing contracts. In its Section entitled "Grandfathered Rates" Gulf South poses the rhetorical question, "[w]hat will happen to grandfathered rates upon the Right of First Refusal ('ROFR')?"

> For customers holding a regulatory ROFR (i.e., maximum rate contract with a term of more than one year), Gulf South will grandfather the applicable maximum rates for all ROFR extensions of that contract. For customers holding a contractual ROFR (i.e., a ROFR granted by Gulf South but not required by Commission regulations), Gulf South will grandfather the applicable maximum rates of that contract for one ROFR period. Subsequent ROFRs will not be grandfathered.

77. In addition, Gulf South also included a its response to the query, "[w]hat happens to grandfathered rates if the customer amends its primary point pairs but does not change the zones in which those points are located?"

> If a customer requests to change its primary point pair but not the associated Expansion Path, the applicable maximum rates for such point pair (which includes the Expansion Path) will continue to be grandfathered. If the customer requests to amend its Expansion Path along with its primary point pair, but does not add expansion capacity in a pass-through zone that would trigger the higher applicable maximum rate, then the rates for that point pair will continue to be grandfathered. This is true if customer's existing Expansion Path already includes expansion capacity in the pass-through zones or if the customer's requested amendment to the Expansion Path does not attempt to add those zones. (Footnote omitted.)

78. In its Initial Comments, QEP argues that Gulf South's grandfathering provision is inadequate and should be modified to be effective for the full remaining term of the current contracts (i.e., grandfathering should not be lost if customer requests a change in points). If Gulf South refuses such a modification, QEP requests that existing customers be permitted to make changes in points prior to the implementation of Gulf South's scheduling proposal without loss of grandfathering protection.

79. BG Energy also states that it is unclear when contracts are grandfathered so that rate impacts of the proposal are neutralized. BG Energy asserts that contracts should be grandfathered to protect against rate impacts as of the implementation date of Gulf South's proposal and any contract changes before that date should not trigger any increases in rates. BG Energy is also concerned that even though a transaction originates and terminates in the same zone but may cross another zone, it pays for that additional zone. BG Energy states that until it knows how Gulf South intends to modify shippers' agreements, BG Energy cannot evaluate Gulf South's proposal; modifications of existing contracts should be made prior to approval of Gulf South's proposal by the Commission, not after.

80. Indicated Shippers also contend that Gulf South's grandfathering proposal is not just and reasonable. Indicated Shippers state that Gulf South's explanation does not provide any assurance to shippers that have only a contractual ROFR, or do not have any ROFR at all. Indicated Shippers state that many of Gulf South's shippers have contracts with discounted rates, where only a contractual ROFR likely would apply. Indicated Shippers contend Gulf South's proposal would negatively affect such shippers in the near term, and thus is not just and reasonable.

81. Gulf South states that it is not willing to modify its grandfathering proposal beyond the provisions offered in its February 21, 2013 answer. Gulf South argues that to grandfather the applicable maximum rate for point changes under existing contracts would unduly discriminate against those customers seeking new capacity. Gulf South argues that the Commission has previously acknowledged that new customers and existing customers desiring to change points are on equal footing under the Request for Service provision of Gulf South's tariff.[43]

2. Commission Determination

82. In its original filing in this proceeding, Gulf South made a commitment that it would not increase the rates contained in its existing contracts pursuant to its proposed change in how it applies its zone rate matrix. Specifically, Gulf South stated that its proposal, "will only apply to new or amended contracts when an Expansion Path is specifically requested by a customer on or after the effective date of the proposed tariff sheets."[44] As discussed below, Gulf South has agreed to postpone the effective date of its proposed tariff records until April 1, 2014. Thus, under the example provided by Gulf South, an existing shipper with a contract in effect on April 1, 2014, with receipt and the

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[43] *See* Gulf South Post-Technical Conference Reply Comments at 27 (citing *Gulf South Pipeline Company, LP*, 135 FERC ¶ 61,119, at P 22 (2011).

[44] Gulf South February 1, 2013 Transmittal Letter at 18.

delivery points in Zone 2 of Gulf South's zone matrix and an Expansion Path from Carthage in Zone 1 to a delivery point in Zone 2 will still pay the applicable maximum Zone 2 to Zone 2 rate, despite the fact a new shipper entering into the same contract after that date or an existing shipper amending its contract to add Zone 1 rights after that date would pay the higher Zone 1 to Zone 2 rate. As set forth below, the Commission finds that Gulf South's proposal to protect its existing customers from any such rate increase is an equitable method of providing existing customers the rate certainty they could expect absent the filing of a general section 4 rate case by Gulf South.

83. However, the tariff language proposed by Gulf South to implement its rate proposal does not include express language implementing its commitment to grandfather the rates under existing contracts. Gulf South proposes in Section 5.1(a) of Rate Schedules FTS and EFT to insert revised language stating:

> Further, unless otherwise agreed upon by Gulf South and Customer in writing, if a Customer's FTS agreement includes a specified Expansion Path, the maximum applicable reservation rate shall be the highest maximum rate applicable to any portion of the contract as set out in Section 4.1 of this Tariff multiplied by the Customer's MDQ.

84. While this language does not specifically grandfather rates for Gulf South's existing customers by its terms, the phrase "unless otherwise agreed upon by Gulf South and Customer in writing" provides a reasonable means for Gulf South to carry out its commitment to grandfather the rates of existing contracts. As Gulf South has stated, its scheduling priority proposal will require it to amend shippers' existing contracts to expressly include contractual ELIs reflecting each shipper's existing Expansion Paths, because those contracts do not currently include such ELIs. The Commission expects that, as part of that process, Gulf South will also add to any existing contracts whose rate would otherwise change on April 1, 2014 a written provision that the rate to be paid by the shipper after April 1, 2014 will be equal to the maximum zone matrix rate applicable immediately prior to April 1, 2014. Gulf South may include such a contractual rate provision in the amended contracts without rendering the service agreement a non-conforming contract required to be filed with the Commission, because the proposed tariff language authorizes Gulf South to negotiate such a rate provision.[45]

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[45] The Commission also finds that this method of implementing Gulf South's grandfathering proposal is preferable to including a separate maximum rate applicable to grandfathered agreements in Gulf South's tariff, because that would result in multiple maximum rates applicable to the same service.

85. In addition, the Commission finds that Gulf South's proposal to grandfather the applicable maximum rates for all ROFR extensions of any existing contract subject to a regulatory ROFR must be implemented through the inclusion of a contractual ROFR in such contracts.[46] Under Gulf South's grandfathering proposal, shippers under the subject existing contracts will no longer be paying the maximum zone matrix rate applicable to their contracts under the tariff record taking effect on April 1, 2014. In these circumstances, the grandfathered rates will constitute a discount from the maximum rate set forth in the tariff. Consistent with the Commission's regulations, the ROFR provisions of Gulf South's current tariff clearly provide that any customer must be paying the maximum applicable rate for the service in order to have a regulatory ROFR.[47] Therefore, the subject contracts will no longer be eligible for a regulatory ROFR. Moreover, Gulf South has not proposed express tariff language guaranteeing the subject grandfathered contracts a ROFR.

86. Accordingly, the Commission finds that the appropriate manner for Gulf South to provide its existing customers who are currently eligible for a regulatory ROFR, but who will no longer be eligible for such a ROFR after April 1, 2014, will be to include a contractual ROFR in their contracts. Gulf South's existing tariff authorizes it to negotiate such contractual ROFRs. Therefore, the Commission expects that Gulf South will, as part of the process of amending shipper contracts, include a contractual ROFR in all contracts which would otherwise lose an existing regulatory ROFR, consistent with the commitments it has made in this proceeding. Thus, the contractual ROFR for existing customers who currently have regulatory ROFRs should not be limited by time, if so desired by the customer. However, Gulf South may still limit ROFRs for customers who currently only have contractual ROFRs to one ROFR period, as it proposed.

87. Finally, QEP argues that existing customers should be permitted to make changes in their receipt and delivery points prior to the implementation of Gulf South's scheduling proposal without loss of grandfathering protection. BG Energy also maintained that contracts should be grandfathered to protect against rate impacts as of the implementation date of Gulf South's proposal. In its original filing, Gulf South stated that its proposal, "will only apply to new or amended contracts when an Expansion Path is specifically requested by a customer *on or after the effective date of the proposed tariff sheets*."[48] Accordingly, customers are free to seek any point pair or other changes they

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[46] The Commission's Regulations require that ROFR protections be offered to any shipper that holds a firm contract for service for twelve consecutive months or more at the maximum rate for that service. 18 C.F.R. § 284.221(d)(2) (2013).

[47] Gulf South GT&C, Section 6.10(2)(a).

[48] Gulf South February 1, 2013 Transmittal Letter at 18 (emphasis supplied).

believe would be beneficial until the implementation date of this proposal, which Gulf South, as further discussed below, has agreed to delay until April 1, 2014.

E. Timing Issues

1. Abandonment Filings

88. Numerous shippers contend that the Commission should not consider or approve the instant proposal until the Commission has resolved Gulf South's abandonment filings in Docket Nos. CP13-91-000, CP13-92-000, CP13-93-000, and CP13-96-000 (Abandonment Filings).

89. The Atmos Group[49] contends that, in the Abandonment Filings, Gulf South is proposing to abandon 1,996 miles of Legacy System pipeline, which consists of approximately twenty-five percent of its overall pipeline mileage, to be effective April 1, 2014, the same date it proposes to place the Combination Facilities filing into effect. The Atmos Group contends that it is premature for the Commission to determine whether the Combination Facilities proposal is just and reasonable "when it is possible that half of the Legacy System could be effectively abandoned" at the same time. The Atmos Group states that the Commission "has rejected tariff revisions and other requests as premature based upon future contingent events."[50]

90. The Atmos Group states that existing customers' contracts must be modified under the Combination Facilities proposal. The Atmos Group states that Gulf South has indicated that if customers made requests to add ELIs to existing contracts, Gulf South would evaluate those requests and amend customers' contracts to the extent the system was able to accommodate the requests received. The Atmos Group states that this places customers in the difficult position of determining the relative values and worth of

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[49] Atmos Energy Corporation, Atmos Energy Marketing, LLC, and Trans Louisiana Gas Pipeline, Inc.

[50] *See* Atmos Group Post-Technical Conference Comments at 2-3 (citing *SunPower Corp.*, 142 FERC ¶ 61,251, at P 26 (2013) (rejecting tariff waiver request as "speculative because it is contingent on the outcome of future events"); *El Paso Natural Gas Co.*, 107 FERC ¶ 61,057, at P 10 (2004) (declining review of transportation service agreements that were unexecuted and not in final form because review at that time would be "premature" and "would not be productive"); *PJM Interconnection, L.L.C.*, 97 FERC ¶ 61,307 (2001) (rejecting proposed tariff and operating agreement changes as "premature … because the changes, if approved, would place into effect numerous provisions currently pending in other dockets" that may not be appropriate given the ongoing regional transmission organization efforts that were underway)).

amending an existing contract to include a new ELI when it is unclear what Gulf South facilities will exist behind an ELI. The Atmos Group states that customers are left to make a decision as to the ELI while speculating as to the ultimate effect of the Abandonment Filings; alternatively, customers can await the conclusion of the Abandonment Filings to determine the value of adding an ELI but at that point, the pipeline may no longer have the flexibility to modify the customer's contract(s). Finally, the Atmos Group provides examples of how resolution of the issues raised by Gulf South's proposal could have a very different outcome if the Abandonment Filings are approved first.

91. Accordingly, the Atmos Group contends that the Commission should reject Gulf South's proposal at this time, without prejudice to Gulf South resubmitting this, or any other, proposal to govern scheduling on the Combination Facilities after the resolution of the Abandonment Filings. In the alternative, the Atmos Group asks the Commission to order Gulf South to not hold an open season for new ELIs and to not amend customers' contracts until after the conclusion of the Abandonment Filings.

92. Gulf South argues that the Commission should reject shippers' arguments that the Commission should delay acting on Gulf South's proposal until the Commission addresses the Abandonment Filings. Gulf South states that the facilities to be abandoned operate at relatively low pressure, and serve local intrastate residential load. Gulf South states that following abandonment, a substantial percentage of Gulf South's overall pipeline mileage will continue to be part of the Legacy System. Gulf South claims that it needs to have in place a mechanism to address the scheduling of the Combination Facilities, even after abandonment is potentially granted. Gulf South also claims that it will provide, upon request, draft contract amendments to its customers reflecting their Expansion Paths and ELIs prior to the issuance of the commission order in the instant proceeding to allow customers more time to analyze whether they wish to request primary point pair changes if the Commission approves Gulf South's proposal. Finally, Gulf South argues that the cases cited by the Atmos Group are inapposite because Gulf South's proposal is not contingent upon the Commission ruling on the Abandonment Filings. Accordingly, Gulf South argues that there is no reason for the Commission to delay acting on its proposal.

2. <u>Effective Date</u>

93. In its initial filing, Gulf South proposed that its tariff records become effective on March 3, 2013. However, Gulf South seeks to delay the implementation of its proposal and describes its method of implementing the delay in its proposed table of contents. Gulf South has italicized all of the language relating to its Combination Facilities proposal in all of its proposed tariff records. In the proposed table of contents, Gulf South describes its delayed implementation method, stating "Gulf South has been granted

delayed implementation for all italicized provisions, except those provisions related to *force majeure* events," and refers shippers to "Gulf South's Internet Website for more information and resource documents applicable prior to implementation of such italicized provisions."[51]

94. In its initial post-technical conference comments, Gulf South argues that the delayed implementation approach advocated in this proceeding is consistent with what the Commission allowed regarding Gulf South's Rate Schedule ENS proposal in Docket No. RP13-294,[52] and should be approved. Gulf South requests a waiver of the Commission's notice requirements to the extent necessary to allow its proposed delayed implementation. Gulf South justifies its proposal and its waiver request stating that "delayed implementation is necessary because Gulf South must make complex changes to its computer system in order to administer the proposed scheduling modifications but cannot begin to make such changes until its proposal is approved."[53]

95. QEP and BG Energy request that that the effective date of the proposed tariff records be the implementation date of April 1, 2014 and not the requested effective date of March 3, 2013. In its reply comments, Gulf South states that it is amenable to this change.[54] Gulf South argues that delayed implementation will allow time for customers to amend contracts to include Expansion Path and ELI information and determine, based on those updated contracts, whether they desire any primary point pair changes.

3. Commission Determination

96. We direct Gulf South, within 15 days of the date that this order issues, to amend its filing so that the effective date of the tariff records matches the implementation date of April 1, 2014. We further direct Gulf South to remove the above-quoted language from its proposed table of contents authorizing delayed implementation at an undetermined date. While the Commission is under no obligation to accept proposed changes in tariffs

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[51] Gulf South Pipeline Company, LP, FERC NGA Gas Tariff, Tariffs, Section 1, Table of Contents, 7.0.0; *see also* Gulf South Post-Technical Conference Initial Comments at 10-11.

[52] Gulf South Post-Technical Conference Initial Comments at 11 (Apr. 19, 2013) (citing *Gulf South Pipeline Co., LP*, 141 FERC ¶ 61,262 (2012); *Columbia Gas Transmission Corp.*, 124 FERC ¶ 61,123, at P 13 (2008); *Bobcat Gas Storage*, 134 FERC ¶ 61,076 (2011)).

[53] Gulf South Post-Technical Conference Initial Comments at 10-11.

[54] *See* Gulf South Post-Technical Conference Reply Comments at 23.

posted more than 60 days prior to the proposed effective date thereof,[55] we waive section 154.207 of the Commission's regulations in this instance because it helps provide shippers with additional time to evaluate the effect of the proposed tariff changes and exercise their rights to modify their contracts accordingly.

97. However, we deny the requests to consolidate this proceeding with the Abandonment Filings, or delay the outcome of this proceeding pending the resolution of the Abandonment Filings. The Commission has broad discretion to structure its proceedings so as to resolve a controversy in the way it best sees fit.[56] As the Atmos Group states, the Commission has rejected tariff revisions and other requests as premature based upon future contingent events. The instant proposal, however, is not based upon future contingent events. Gulf South's proposed revisions to how it schedules capacity can be implemented if the Commission accepts the Abandonment Filings, and can be implemented if the Commission rejects the Abandonment Filings. While the Abandonment Filings do create some uncertainty for Gulf South and its shippers, this uncertainty is not qualitatively different from the everyday uncertainty that all market participants accept under the NGA, which allows any pipeline to file pursuant to sections 4 or 7 at virtually any time, with no predetermined result. Likewise, here, we accept the instant proposal, but do not consider it to prejudge or limit the Commission's determinations in the Abandonment Filings, which shall be reviewed with due process on their own merits.

<u>The Commission orders</u>:

(A) The tariff records listed in the Appendix are accepted, effective April 1, 2014.

(B) Within 15 days of the date that this order issues, Gulf South shall file modified tariff records reflecting its revised effective date, as discussed above.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

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[55] 18 C.F.R. § 154.207 (2013).

[56] *E.g.*, *Stowers Oil and Gas Co.*, 27 FERC ¶ 61,001 (1984); *PJM Interconnection, L.L.C.*, 120 FERC ¶ 61,013 (2007).

Appendix

Gulf South Pipeline Company, LP
FERC NGA Gas Tariff
Tariffs
Accepted, to be effective April 1, 2014

Section 1, Table of Contents, 7.0.0
Section 5.1, Rate Schedules - FTS, 4.0.0
Section 5.11, Rate Schedules - EFT, 3.0.0
Section 6.2, GT&C - Definitions, 8.0.0
Section 6.8, GT&C - Requests for Service, 8.0.0
Section 6.10, GT&C - Right of First Refusal, 7.0.0
Section 6.12, GT&C - Nominations, Confirmations, & Scheduling, 5.0.0
Section 7.1, Form(s) of Service Agreements - FTS/EFT/NNS, 5.0.0
Section 7.1.1, Form(s) of Service Agreements - FTS/EFT/NNS, 3.0.0
Section 7.8, Form(s) of Agmts-NNS/FTS/EFT/ENS Discounted Rates Ltr Agmt, 5.0.0
Section 7.8.1, Form(s) of Agmts - NNS/FTS/EFT/ENS Discounted Rate-Exhibit A, 4.0.0
Section 7.8.2, Form(s) of Agmts - NNS/FTS/EFT/ENS Discounted Rate-Exhibit B, 4.0.0
Section 7.8.3, Form(s) of Agmts - NNS/FTS/EFT/ENS Discounted Rate-Exhibit C, 4.0.0
Section 7.10, Form(s) of Agmts - NNS/FTS Negotiated Rate Letter Agreement, 4.0.0
Section 7.10.1, Form(s) of Agmts - NNS/FTS Negotiated Rate - Exhibit A, 3.0.0
Section 7.10.2, Form(s) of Agmts - NNS/FTS Negotiated Rate - Exhibit B, 3.0.0
Section 7.10.3, Form(s) of Agmts - NNS/FTS Negotiated Rate - Exhibit C, 3.0.0